THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

W.P.No.16537 of 2005

Dated 28th July, 2005

Between:

Kotturu Pentaiah, @ Mera pentaiah,

S/o. Dharmaiah, aged about 65 years,

Occ: Tailor, R/o.Vill & (M) Nandipet,

Dist. Nizamabad, A.P. … **Petitioner**

And

1. The Govt. A.P. rep.by

District Collector, Nizamabad, A.P.

2. The Mandal Revenue Officer,

(M) Nandipet, Dist.Nizamabad, A.P. … **Respondents**

ORDER:

The writ petition is filed to declare the action of the second respondent-Mandal Revenue Officer, Nandipet Mandal, Nizamabad District, in trying to dispossess the petitioner illegally from the land in Survey No.686/2 (H.No.3-5/1A) to an extent of 39 square yards situated at Nandipet, in spite of possessing clear valid title, in the guise of notice dated 08-07-2005 issued under Section 6 of the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act') as illegal, and arbitrary.

The case of the petitioner is that he has purchased the plot situated in Sy.No.686/2 at Nandipet Village and Mandal under the sale deeds dated 26-05-2004 and 28-06-2004 bearing document Nos.5382 and 5497 of 2004 from N. Mohan Reddy, N. Linga Reddy, N.Vital Reddy and M.Janaki Rama Goud. Over the said land, the petitioner said to have constructed a small mulgi bearing No.3-5/1 and is running tailor shop by paying the taxes to Gram Panchayat regularly. When the Gram Panchayat interfered and tried to dismantle the shop of the petitioner, he filed a suit for perpetual injunction in O.S.No.87 of 2004 on the file of Junior Civil Judge, Armoor, Nizamabad District, which was decreed in his favour on 23-11-2004.

It is his further case that the second respondent issued a notice under Section 6 of the Act on 08-07-2005 requiring the petitioner to vacate the land in question within seven days on the ground of unauthorized occupation of Government land. Pursuant to the said notice the petitioner submitted explanation on 12-07-2005 stating that the land in Survey No.686/2 partly belongs to Government and partly belongs to private pattadars and he purchased 39 square yards through registered sale deeds from lawful owners and also got a decree in his favour and some enimical persons are bringing pressure on the second respondent to dispossess the petitioner from the said plot. Now, the second respondent, without final disposal of the proceedings initiated under Section 6 of the Act, is trying to dispossess the petitioner from the said land illegally. Hence, this writ petition.

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Revenue, appearing on behalf of the respondents.

The only grievance of the petitioner is that though he is having valid title, and submitted his explanation pursuant to the notice of the second respondent, dated 08.7.2005, the second respondent is trying to dispossess him from the said land illegally, and therefore, seeks a direction to the respondent not to dispossess the

petitioner from his land.

In view of the facts and circumstances of the case, without going into the merits of the case, it would suffice to direct the second respondent to consider the explanation submitted by the petitioner in response to the notice given by him dated 08-07-2005 and to pass appropriate orders in accordance with law, after affording an opportunity to the petitioner, within a period of 12 weeks from the date of receipt of a copy of this order. Till such time, the respondents are directed not to evict the petitioner from his land.

With the above directions, the writ petition is disposed of at the stage of admission. No order as to costs.

Before parting with the order, it is pertinent to note that the Mandal Revenue Officer seems to be unaware under what provisions notice has to be given. As per the provisions of the Act, initially, a notice has to be given to a person in occupation of land under Section 7 of the Act, before initiating eviction proceedings. It is only after issuance of notice under Section 7 and after considering the explanation of that person, if any, the final orders under Section 6 of the Act, have to be passed. Therefore, without following the provision of law the said notice has been issued to the petitioner. Therefore, the Mandal Revenue Officer is directed not to repeat the same in future.

ELIPE DHARMA RAO, J

Date: 28th July, 2005

Note: Issue CC in three days

(B/o.)

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